

## 1. Definitions

**Agreement** means these Terms and Conditions, together with any Authority and Customer credit application.

**Authority** means the authority by which the Customer appointed the Company to act on its behalf.

**Company** means Avion International (Australia) Pty Ltd ABN 81 133 023 588 and its nominees, agents and employees.

**Connected Party** means in relation to the Goods the Owner, exporter, importer, supplier, purchaser, carrier or any agent of any of the aforementioned parties, other than the Company.

**Consequential Loss** means any loss or damage which:  
(a) does not arise naturally or in the usual course of things; or

(b) constitutes, or arises from or in connection with, a loss in revenue, profit or opportunity or a loss of goodwill or business reputation, even if such loss or damage arises naturally or in the usual course of things.

**Customer** means:

(a) Where there is an Authority, the customer named in the Authority, including its employees, officers, agents and contractors.

(b) Where there is no Authority, the person instructing the Company to provide the Services; and for the avoidance of doubt, the Customer may also be the Owner.

**Dangerous Goods** means any Goods which are, or may become, hazardous, volatile, explosive, flammable, radioactive, likely to harbour or encourage vermin or pests, or capable of posing a risk or causing damage to any person or property.

**Goods** means the goods, including packaging, pallets or containers, the subject of the Services.

**Government Authority** means any government agency, authority, department or body, exercising jurisdiction in any nation, state, port or airport.

**Law** means any law, regulation, rule or international convention.

**Loss** means any loss, cost, damage, expense, claim, demand, action, proceeding or liability of any kind, (including legal costs on an indemnity basis) and whether actual, prospective or contingent and whether ascertained or unascertained.

**Owner** means the owner, importer or exporter of the Goods, or a person authorised to act on behalf of the owner, importer or exporter of the Goods.

**Perishable Goods** means any Goods liable to waste, deterioration or spoilage, and includes without limitation fruit, vegetables, dairy products, meat, and animals.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**Services** means the work performed by the Company in relation to the Goods, including facilitating the import, export, transport, or storage of the Goods; and any ancillary acts for those purposes, including preparing any documentation or providing any information to a Government Authority.

**SBC contract** means a contract that is either a "small business contract" or a "consumer contract" as defined in section 23(3) of Schedule 2 to the Competition and Consumer Act 2010 (Cth), but does not include:

(a) a contract of marine salvage or towage;

(b) a charter party of a ship;

(c) a contract for the carriage of goods by ship; or

(d) a "small business contract" where the Customer does not employ fewer than 20 persons

**Subcontractor** means a third party (and their employees, agents and contractors) engaged to provide all or part of the Services.

**Terms and Conditions** means these terms and conditions.

**Transport Document** includes a bill of lading, waybill, consignment note, or similar carriage document.

A reference to the Company's fees includes any taxes, including goods and services tax, payable in respect of the Services.

## 2. General

- 2.1. The Company is not a common carrier. The Company will not be liable as a common carrier.
- 2.2. These Terms and Conditions take priority over and will prevail to the extent of any inconsistency with the Authority, any credit application made by the Customer, the Customer's terms and conditions or other document issued by the Customer, and any terms and conditions set out in any Transport Document.
- 2.3. The Agreement is governed by the laws of New South Wales, Australia. The Company and the

Customer submit to the jurisdiction of the courts of New South Wales and of the Federal Court of Australia.

- 2.4. A variation of these Terms and Conditions will only be valid if in writing and signed by each party or signed by a person with the authority to bind each party.
  - 2.5. The Company may assign its rights and obligations under the Agreement without the Customer's consent. The Customer must not assign its rights and obligations under the Agreement without the Company's written consent.
  - 2.6. Any notices under these Terms and Conditions must be in English and in writing.
  - 2.7. Subject to clause 14, all rights, indemnities and limitations of liability contained in these Terms and Conditions will have their full force and effect, despite:
    - (a) any breach of term or condition of these Terms and Conditions, the Agreement, or any collateral agreement by the Company;
    - (b) the performance of the Services;
    - (c) the delivery of the Goods; or
    - (d) the expiry or termination of the Authority.
  - 2.8. Without limiting the effect of clause 2.7, clauses 2.5, 3.14, 4.2, 6.10, 7.3, 7.4, 7.5, 9, 11, 12, 13, 14.6, 14.8, 14.9, 14.10, 14.11, 14.12, and 14.13 of these Terms and Conditions will survive termination.
  - 2.9. If a condition or part of a condition of this Agreement is unenforceable, it must be severed from and does not affect the rest of the Agreement.
  - 2.10. The Company is not bound by any waiver, discharge or release of a condition or any agreement which purports to change this Agreement, unless it is in writing and signed by or for the Company.
  - 2.11. A reference in this Agreement to any law includes any statutory modification, substitution or re-enactment of it.
- ## 3. Services
- 3.1. Services are provided by the Company subject to these Terms and Conditions.
  - 3.2. Without limitation to other methods of acceptance, by instructing the Company to provide the Services the Customer agrees to be bound by the Terms and Conditions.
  - 3.3. At all times the Goods are at the risk of the Customer.
  - 3.4. The Company may agree or refuse to provide Services at its discretion.
  - 3.5. The Company is authorised by the Customer to choose the method for performance of the Services at the Company's complete discretion.
  - 3.6. The Customer authorises the Company to open any package containing Goods, and do any other thing in order to inspect or weigh the Goods.
  - 3.7. The Customer agrees that:
    - (a) the value of the Goods will not be declared or inserted into a Transport Document or contract for the purpose of extending a carrier's liability unless the Customer provides express written instructions to the Company to do so, and if required, the carrier agrees;
    - (b) where a Subcontractor's or carrier's charges may be determined by the extent of liability assumed by the Subcontractor or carrier, no declaration of value will be made for the purpose of extending the liability of the Subcontractor or carrier, and the Goods will be dealt with at the Customer's risk for minimum charges, unless the Customer provides written instructions to the contrary to the Company;
    - (c) the Company reserves the right to not make any declaration or take any action in respect of the Customer's Goods unless the Customer has provided the Company with sufficient notice, written instructions and the documents necessary to take that action in relation to those Goods.
  - 3.8. At any time, the Company may, acting reasonably, deem that certain Goods are Dangerous Goods.
  - 3.9. The Company at its reasonable discretion may destroy or otherwise deal with any Goods the Company considers are Dangerous Goods, without notice or compensation to the Customer.
  - 3.10. The Company's delivery obligations are satisfied if the Company delivers the Goods to the delivery address instructed by the Customer, and a person at that address provides a receipt or signs a delivery docket, or if authorised by the Customer, the Goods

are left at the delivery address without obtaining a receipt or signed delivery docket.

- 3.11. If a person at the delivery address cannot or refuses to take delivery of the Goods, or the Goods cannot be delivered for any other reason, the Customer authorises the Company to deal with the Goods at the Company's reasonable discretion, including storing, disposing of, or returning the Goods.
  - 3.12. The Goods may be stored at any place at the absolute discretion of the Company at the Customers' expense.
  - 3.13. If the Company stores the Goods, the Company may require that the Customer remove the Goods from storage by giving notice delivered to an address provided by the Customer to the Company.
  - 3.14. If the Customer, Owner or consignee of the Goods is insolvent, placed under external administration, bankrupt or deceased, the Company is authorised to return any Goods to the Shipper, exporter or supplier of those Goods, where the Company has not received authority from the Shipper, exporter or Supplier of the Goods to release the Goods to the Customer, Owner or consignee.
  - 3.15. The Customer irrevocably appoints the Company with the power and authority to take any action and execute any document in the name of and on behalf of the Customer as required by the Company to provide the Services.
  - 3.16. The Customer agrees that the Company may receive and retain for its own account allowances, brokerages and commissions from shipping and forwarding agents, shipping lines, insurance brokers, airlines and any other person with whom the Company deals and that the Company is not required to disclose the receipt and retention of such amounts to the Customer, even, without limitation, if acting as agent for the Customer.
- ## 4. Customer Obligations
- 4.1. The Customer will provide the Company with all assistance, information and documentation necessary to enable the Company to provide the Services, and punctually comply with any Law or request from a Government Authority.
  - 4.2. The Customer is under a continuing obligation to provide any information which may materially affect the capacity of the Customer to perform its obligations under the Agreement.
  - 4.3. The Customer will keep confidential the Company's fees or charges and any waiver, discount, release or indulgence provided by the Company in relation to the provision of the Services.

## 5. Instructions

- 5.1. Any instructions given by the Customer must be in writing in English and be legible.
- 5.2. The Company has the discretion to refuse to accept the Customer's instructions.
- 5.3. Sufficient notice of instructions must be given by the Customer to the Company to enable the Company to follow those instructions. If insufficient notice is given and the Company attempts to adopt the Customer's instructions, the Company is not deemed to have accepted the instructions.
- 5.4. If the Company accepts the Customer's instructions on one occasion, the Company will not be bound by those instructions when providing Services in the future.
- 5.5. If the Company accepts the Customer's instructions to perform the Services in a particular way, it will give priority to that method, but may depart from that method at its reasonable discretion.

## 6. Fees

- 6.1. The Company's fees are earned on the earlier of the commencement of the performance of the Services (or part thereof), or when the Goods are delivered to the Company or its subcontractors.
- 6.2. The Company's fees may include any disbursements and other amounts that the Company is required to pay third parties in connection with the Services. The Company at its discretion may vary its fees if the amount of any such disbursements change.

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- 6.3. The Company's fees must be paid within 7 days of an invoice or as otherwise agreed in writing (the **Due Date**).
- 6.4. The Company at its discretion may determine its fees, including by weight, measurement or value.
- 6.5. The Company may re-weigh, re-measure or re-value the Goods at any time, and amend its fees at its reasonable discretion.
- 6.6. Any information contained in a quotation provided by the Company in relation to the fees applies to the specific item, weight and volume quoted, designated Services and standard of Services, and is only valid until the earlier of 14 days after being provided, the quote being withdrawn or the quote expiring.
- 6.7. A quotation is not an offer and is not binding on the Company. A quotation may change based on changes to freight, insurance, warehousing, fees, and any other charges, with or without notice to the Customer.
- 6.8. Unless otherwise stated, the Company's fees are exclusive of goods and services tax.
- 6.9. Any fees or charges deducted from payments made due to international currency exchanges are the responsibility of the Customer and the Customer must ensure full payment is made to the Company together with any fees and charges.
- 6.10. The Customer remains responsible for the payment of fees:
- even where an arrangement is made for the fees to be paid by another person;
  - whether or not the Goods are delivered or damaged or the Services performed as instructed.
- 6.11. If the fees are not paid in full within 7 days of the Due Date then, without limitation to its rights, the Company may:
- charge interest on the late payment at the published business overdraft rate of the Commonwealth Bank of Australia.
  - charge an administration fee each month, or portion thereof, that an amount owing by the Customer is overdue;
  - commence proceedings against the Customer or enforce any personal guarantee;
  - call and act upon any security interest that the Supplier is entitled to enforce;
  - recover against the Customer all moneys that are owed to the Company including incidental costs (legal and debt collection costs) that are incurred in relation to the Customer's default;
  - list the default in payment with the appropriate credit reporting agency; and
  - perform any other action that the Company deems appropriate to enforce this Agreement and recovery monies owed
- 6.12. The Customer will not defer, set-off or withhold payment of any amount payable to the Company by reason of any claim the Customer has, or claims it has, against the Company.
- 7. Subcontractors**
- 7.1. The Customer authorises the Company to:
- subcontract all or part of the Services to a Subcontractor; and / or
  - as the agent of the Customer, contract with a third party service provider on behalf of the Customer on any terms whatsoever, including terms that limit or exclude the liability of the third party service provider.
- 7.2. The Customer authorises a Subcontractor to subcontract all or part of the Services.
- 7.3. All exclusions or limitations on the liability of the Company in these Terms and Conditions extend to protect:
- all Subcontractors;
  - the agents, employees and servants of any Subcontractor or the Company; and
  - any person engaged to provide all or part of the Services.
- 7.4. The Customer undertakes that it will not make any claim against, or impose any liability upon, any Subcontractor in connection with the provision of the Services or the Goods.
- 7.5. The Customer undertakes that it will indemnify any Subcontractor from and against any Loss if a claim is made against a Subcontractor by any party (including the Customer) in connection with the provision of the Services or the Goods.
- 7.6. For the purpose of clauses 7.3 and 7.5, the Company acts as trustee on behalf of and for the benefit of any Subcontractor, and to this extent each Subcontractor is deemed to be a party to this Agreement.
- 8. Intellectual Property**
- 8.1. The Customer agrees that the Company retains all copyright and intellectual property subsisting in all documents and things created by, or for, the Company in connection with the performance of the Services, including copyright and intellectual property that now exists or that later comes into existence.
- 9. Warranties, liability and indemnity**
- 9.1. The Customer (on behalf of itself, the Owner, and any Connected Parties) warrants to the Company that:
- it is the owner of the Goods, or is the authorised agent of the owner of the Goods and is authorised to complete and sign documentation related to the Goods and the Services;
  - it enters into the Agreement on its own behalf, or in its capacity as the authorised agent of the owner of the Goods;
  - it and all Connected Parties have complied with all Laws relating to the Goods, including the nature, condition, packaging, handling, storage and carriage of the Goods;
  - in engaging the Services from the Company, it will not procure the Company to perform any act in breach of any Laws;
  - it and all Connected Parties will observe all Laws and requirements of Government Authorities;
  - all information and documentation provided by the Customer and Connected Parties to the Company or its Subcontractors is accurate and complete, and neither it nor a Connected Party has omitted to provide any requested or material information;
  - the Goods are packed to endure the ordinary risks of handling, storage and the Services, having regard to the nature of the Goods;
  - the Goods are not Dangerous Goods, unless the Company has agreed in writing to provide the Services in respect of those particular Dangerous Goods, and in which case, warrants that it has made full disclosure of Dangerous Goods and such Goods are distinctly marked; and
  - all Goods are adequately and accurately marked, labelled or branded.
- 9.2. To the extent permitted by Law, the Company excludes all liability in respect of any claim made against the Company, its employees, agents and Subcontractors, including without limitation, liability for fundamental breach of contract, or a negligent, unlawful, reckless or wilful act or omission.
- 9.3. The Company excludes from this Agreement all conditions, warranties, terms and consumer guarantees implied by Laws, general law or custom except any the exclusion of which would contravene any Laws or cause this condition to be void (Non-Excludable Condition).
- 9.4. The Company's liability for any breach of a Non-Excludable Condition is limited, at the Company's option, to supplying the Services again, or the cost of supplying the Services again.
- 9.5. The Company will not be liable for omitting to inspect or take any other action in respect of Goods where Goods have been damaged or pillaged, unless the Customer provides the Company with written instructions to take that action in relation to those Goods and the Company accepts those instructions.
- 9.6. Where the liability of the Company is not excluded by the Agreement, Law or otherwise, the liability of the Company is limited to the lesser of Australian \$100 or the value of the Goods at the time the Goods were received by the Company.
- 9.7. The Company will not be in breach of any of its obligations to the Customer or liable for any Loss (including Consequential Loss) suffered by the Customer arising from or connected with the Company's compliance with any Law, including without limitation disclosing confidential information to a Government Authority.
- 9.8. Without limitation to any other clause of the Agreement, the Company will be discharged from all liability in connection with the performance of the Services or the Goods unless:
- notice of any claim is received by the Company
- within 7 days of the earlier of the delivery of Goods, the date the Goods should have been delivered, or where the claim does not relate to loss or damage to Goods, the event giving rise to the claim; and
- suit is brought and written notice is received by the Company within 9 months of the earlier of the delivery of the Goods, the date the Goods should have been delivered, or where the claim does not relate to loss or damage to Goods, the event giving rise to the claim.
- 9.9. The Company will not be liable for any delay or failure to perform an obligation under the Agreement caused by an event beyond the reasonable control of the Company (**Event**).
- 9.10. If an Event causes a delay in the performance of a Company's obligation exceeding 10 days, the Company may terminate the provision of the Services by notice to the Customer.
- 9.11. The Customer indemnifies the Company from and against (and must pay on demand for) all Loss arising directly or indirectly from or in connection with the Goods or the performance of the Services (including Consequential Loss), including Loss in connection with a breach of contract, or a negligent, unlawful, reckless or wilful act or omission by the Company or its employees, agents and contractors.
- 9.12. Without limitation to clause 9.11 the Customer indemnifies the Company from and against (and must pay on demand for) any Loss arising from
- the Customer's or Owner's failure to return any container or transport equipment involved in the performance of the Services by the date required under any Contract between the Company and the supplier of that container or transport equipment;
  - any claim against the Company by a person who claims to have an interest in the Goods;
  - breach of this Agreement, including any warranty provided by the Customer; and
  - any claim for general average and will provide any security requested by the Company for the release of any Goods that are the subject of a claim for general average.
- 9.13. The Customer indemnifies the Company from and against (and must pay on demand the amount of) all duty, GST, and any other fees and taxes incurred in connection with the Goods payable to a Government Authority.
- 9.14. The Customer indemnifies the Company from and against (and must pay on demand for) all costs payable to third parties in relation to the carriage, storage, treatment or entry of the Goods.
- 9.15. The indemnities in clauses 9.11, 9.12, 9.13 and 9.14 continue whether or not the Goods are pillaged, stolen, lost or destroyed.
- 10. Insurance**
- The Company will not arrange any insurance in relation to the Goods on behalf of the Customer.
- 11. Lien**
- 11.1. The Company has:
- a particular and general lien on all Goods and documents relating to the Goods; and
  - a right to sell those Goods and documents by public auction or private sale (at the Company's discretion) without notice and apply the proceeds of sale;
- in respect of all sums due and owing from the Customer.
- 11.2. The lien will also cover the Company's reasonable costs and expenses relating to the exercise of its lien and right of sale, including the Company's reasonable legal fees.
- 11.3. For the purposes of the lien, the Company will retain constructive possession of the Goods and the lien and rights granted by this clause will survive delivery of the Goods. The Company is entitled to retain the proceeds of sale of the Goods in respect of all sums due and owing from the Customer.
- 12. PPSA**
- 12.1. Terms used in clause 12 that are defined in the PPSA have the same meaning as in the PPSA.

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- 12.2. Without limitation to other rights of the Company, from the time the Goods are in the possession of the Company or a Subcontractor, the Goods are subject to a continuing security interest in favour of the Company for the payment of all amounts due and owing by the Customer under the Agreement.
- 12.3. The Customer acknowledges and consents to the Company's registration and perfection of the Company's security interest under the Agreement for the purposes of the PPSA.
- 12.4. The Customer will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.
- 12.5. To the extent permitted by law, the Customer irrevocably waives any right it may have to:
- receive notices or statements under sections 95, 118, 121(4), 124(4), 125, 130, 132(3)(d) 132(4) and 135 of the PPSA; and
  - redeem the Goods under section 142 of the PPSA;
  - reinstate this Agreement under section 143 of the PPSA; and
  - receive a verification statement.
- 12.6. The Customer will do all things and execute all documents reasonably necessary to give effect to the security interest created under this Agreement or comply with any reasonable request by the Company in connection with the PPSA.
- 13. Uncollected goods**
- 13.1. The Company may at its discretion sell or otherwise dispose of Perishable Goods without notice to the Customer where the Goods are not collected immediately upon arrival, are insufficiently or incorrectly addressed or are not identifiable.
- 13.2. Without limitation to clause 13.1, the Company may at its discretion sell or return Goods that cannot be delivered because they are insufficiently or incorrectly addressed, are not identifiable, are uncollected or not accepted after 21 days' notice to the Customer or where the Customer fails to pay any cost or do any action reasonably necessary for the Company to deliver the Goods.
- 13.3. Where the Company sells Goods under clauses 11, 13.1 or 13.2:
- it does so as principal, not as agent, and is not the trustee of the power of sale;
  - the Customer must pay all reasonable costs, charges and expenses incurred by the Company in connection with the storage, sale or return of the Goods, which may be deducted from the proceeds of the sale of the Goods;
  - the Company is entitled to recover any deficit from the Customer where the proceeds of sale of the Goods do not satisfy the amounts payable to the Company.
- 14. SBC Contracts**
- The Company does not exclude or limit the application of any compulsory applicable Laws, including Schedule 2 of the Competition and Consumer Act 2010 (Cth), where to do so would contravene those Laws or cause any part of this Agreement to be void. If the Agreement is a SBC Contract, then:
- 14.1. The definition of "Loss" is amended to mean any actual or ascertainable loss, cost, damage, expense, claim, demand, action, proceeding or liability of any kind (including legal costs on an indemnity basis).
- 14.2. Clause 2.5 is modified, so that neither party may assign its rights or obligations under the Agreement without the written consent of the other party, which consent must not be unreasonably withheld.
- 14.3. Clause 3.12 is amended so that "absolute" is replaced with "reasonable".
- 14.4. Clause 6.1 is modified, so that the fees are earned when the corresponding Service is performed or attempted to be performed, or where applicable, the corresponding disbursement is incurred.
- 14.5. If a variation to a quote or fee under clauses 6.4 or 6.5 is material, where it is reasonably practical, the Company shall give notice to the Customer of that variation.
- 14.6. If the Customer objects to a variation to a quote or fee under clauses 6.4 or 6.5, but does not provide the Company with acceptable alternative directions in respect of the goods, the Company in its reasonable discretion may, deliver, return, store or otherwise deal with the Goods, and the Customer shall be liable for all fees earned and costs incurred by the Company in doing so.
- 14.7. Clauses 7.4 and 7.5 are modified, so that the Customer:
- may make a claim against or impose liability upon any Subcontractor; and
  - is not required to indemnify any Subcontractor from and against any Loss,
- to the extent that the claim, liability or Loss was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Subcontractor.
- 14.8. Clauses 9.2 and 9.3 are modified so that the Company's liability is not excluded to the extent that it was directly caused by, or in connection with a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and contractors.
- 14.9. Clause 9.6 is modified so that the Company's liability is limited to the lesser of the actual loss suffered by the Customer or the value of the Goods at the time the Goods were received by the Company.
- 14.10. Clause 9.8 does not apply, and, without limitation to any other clause of the Agreement, the Company will be discharged from liability in relation to any claim:
- where the loss to the Customer results from the act of a Subcontractor; and
    - the Company's right to make a claim against that Subcontractor is subject to time limitations; and
    - the Customer does not make its claim against the Company within a period reasonably sufficient to allow the Company to make a corresponding claim against the Subcontractor within any applicable time limitation period, or
  - in all other cases, where the Customer does not make its claim within 2 years from the earlier of the delivery of the Goods, if the Goods are not delivered, the date the Goods should have been delivered or where the claim does not relate to loss or damage to Goods, the time of the event giving rise to the claim.
- 14.11. The Customer is not required to indemnify the Company under clause 9.11 or 9.12(b), unless the Loss was caused by or in connection with a breach of contract, or a negligent, unlawful reckless or wilful act or omission by the Customer or its employees, agents and contractors.
- 14.12. The Company will not be liable for Consequential Loss or indirect Loss, unless the Company had actual knowledge that such loss might be incurred.
- 14.13. Clause 11.1(b) is modified so that the Company may only exercise its right of sale under a lien over Goods after the Company has given 21 days' notice in writing to the Customer of its intention to do so.
- 15. Privacy**
- 15.1. The Customer hereby authorises the Company to collect, retain, record, use and disclose personal information about the Customer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a Solicitor or any other professional consultant engaged by the Company, a debt collector, credit reference organisation and/or any other individual or organisation which maintains credit references and/or default listings.
- 15.2. The Customer also authorises the Company to make enquiries with respect to the Customer's credit worthiness; to exchange information with other credit providers in respect to previous defaults of the Customer and to notify other credit providers of a default by the Customer.
- Additional Warehouse Terms and Conditions**
- 16. Bonded Warehouse – access requires identity check and safety.**
- 16.1. Safety  
The Company has the right to open and inspect any goods in its possession without notice for safety, security, customs or other regulatory reasons.
- 16.2. Identity check  
Photo identification must be presented for documentation purposes upon arrival by all Customers who wish to inspect or access any goods held by the Company.
- 17. Fees**
- 17.1. All Company fees for Services including storage or warehousing Services are payable in arrears and are calculated at a minimum of one-week charge;
- 17.2. The fees for the handling in and out of the Company's warehouse are pursuant to the quotation provided by the Company and are subject to change without notice.
- 18. Accidental damages against products stored**
- 18.1. Limitation of liability  
To the fullest extent permitted by law the Company and its servants and agents are not liable for any direct, indirect or consequential loss or damage, other than with respect to those warranties which are required at law, or which are implied expressly or implicitly in law arising from or in connection with the supply of goods or services.
- 18.2. Notification of loss or damage  
Any claim for loss or damage is to be notified by the Customer to the Company in writing, or by telephone and later confirmed in writing, within 14 days of the Customer taking possession of the goods.
- 19. Lien of goods due to default debtor**
- 19.1. In addition to any right of lien to which the Company may be entitled to under law, the Company is entitled to exercise a general lien over all items in the Company's possession belonging to the Customer until the Customer has paid in full for all services supplied by the Company in accordance with the Company's terms and conditions.
- 19.2. The Company may at its sole discretion sell any item that is subject to a lien, provided that the Company will pay to the Customer any surplus proceeds that are realised by the Company from the sale of any such items after discharging in full all moneys outstanding to the Company in respect of any unpaid invoices and all reasonable costs of sale incurred by the Company.
- 19.3. Legal and equitable title in and to the goods shall not pass to the Customer until payment in full for all invoices has been received by the Company.
- 20. Customer exit and notice period**
- 20.1. Termination  
Either party may terminate this agreement by giving the other party 21 days written notice of the termination date. The customer must pay any outstanding fees due to the Company and any expenses on default or any other moneys owed to the Company up to the termination date. Any calculation of the outstanding fees will be made by the Company.
- 20.2. Notification  
The customer must notify the Company in writing within 7 days of:
- any alteration of the name or ownership of the customer;
  - the issue of any legal proceedings against the customer;
  - the appointment of any provisional liquidator, receiver, receiver manager or administrator to the customer; and
  - any change in ownership of the business name of the customer. The customer agrees that it shall be liable to the Company for all goods supplied to the new owner by the customer until notice of such change is received.
- 21. Customer insurance against products**
- 21.1. Risk  
All risk shall pass to the customer when the goods leave the possession of the Company.
- 21.2. Insurance against products
- The Company will not insure any goods received from the customer or in the possession or custody of the Company, its employees or agents or the provisions of any service.
  - It is the responsibility of the customer to insure and keep insured the goods in the name of the customer for the full insurable value of the goods whilst they are in the warehouse and/or possession of the Company and whilst they are in transit.
  - The insurance must be against the risks of loss or damage by fire, explosion, burglary, theft and such other risks as are normally insured against by prudent persons carrying on businesses similar to those carried on by the customer and

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- the Company and the insurer must waive any rights of subrogation against the Company.
- (d) The customer will arrange goods in transit insurance for the goods for not less than the full value of the goods covering any transits undertaken by the Company, its employees or agents in the provision of the services.
  - (e) A shrinkage provision applies for the small quantity of losses resulting from handling or storing of the Customer's property. The shrinkage provision is 1.5% calculated by sum of the annual warehouse activities in dollar terms.

**22. Claim and resolution**

- 22.1. The customer must notify the Company within 14 days of becoming aware of any claim against the Company.
- 22.2. If any dispute arises under or in connection with this contract which is not able to be resolved by the parties within 14 days, the nominated senior executive (or equivalent) of each party will promptly meet and discuss in good faith with a view to resolving such dispute.
- 22.3. If any dispute is unable to be resolved within 14 days of being referred to the nominated senior executive of the parties in accordance with this clause, the parties agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Dispute Centre (ACDC) in accordance with the ACDC's guidelines, before resorting to arbitration or litigation.
- 22.4. If the parties fail to settle any dispute in accordance with this clause, the parties may agree to submit the dispute for resolution to final and binding arbitration under the rules of arbitration of the Institute of Arbitrators & Mediators Australia by one or more arbitrators appointed in accordance with those rules. The cost of arbitration shall be shared equally between the parties.
- 22.5. The parties to a dispute will continue to perform their respective obligations under this contract, pending the resolution of a dispute under this clause.

**Signed on behalf of the Customer**

I/We, the undersigned, do hereby confirm that I/We have read and understood the Terms and Conditions of Avion International (Australia) Pty Ltd ABN 81 133 023 588 and agree to be bound by these terms and conditions should our Credit Application be accepted.

**APPLICANT 1**

DATED	<input type="text"/>
APPLICANT NAME	<input type="text"/>
APPLICANT SIGNATURE	<input type="text"/>
WITNESS NAME	<input type="text"/>
WITNESS SIGNATURE	<input type="text"/>

**APPLICANT 2**

DATED	<input type="text"/>
APPLICANT NAME	<input type="text"/>
APPLICANT SIGNATURE	<input type="text"/>
WITNESS NAME	<input type="text"/>
WITNESS SIGNATURE	<input type="text"/>